

# Center on Race, Poverty & the Environment

---

47 Kearny Street, Suite 804  
San Francisco, CA 94108

415/346-4179 • fax 415/346-8723

sfsarabia@crpe-ej.org

Ralph Santiago Abascal (1934-1997)  
*Director 1990-1997*

Luke W. Cole  
*Executive Director*

Caroline Farrell  
*Assistant Director*

Lupe Martinez  
*Director of Organizing*

Gustavo Aguirre  
*Assistant Director of Organizing*

Daniela Simunovic  
Irma Medellin  
Refugio Gutierrez  
*Community Organizers*

Don Spradlin  
*Director of Development*

Lauren Richter  
*Development Assistant*

Valerie Gorospe  
*Administrative Assistant*

Brent Newell  
*Legal Director*

Ingrid Brostrom • Alegria De La Cruz  
Jennifer Giddings • Marybelle Nzegwu  
Sofia Sarabia  
*Staff Attorneys*

April 22, 2009

*Electronic submittal*

<http://www.arb.ca.gov/lispub/comm/bclist.php>

Mary Nichols, Chairman  
Board Members  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95812

**Re: Low Carbon Fuel Standard**

Dear Chairman Nichols and Board Members:

The Center on Race, Poverty and the Environment (CRPE) and the undersigned organizations and individuals, submit these comments regarding the Environmental Analysis in the Low Carbon Fuel Standard (LCFS). CRPE represents a number of low-income communities and communities of color throughout California, primarily in the south San Joaquin Valley. These communities bear a disproportionate share of California's environmental and public health

▪ Providing Legal & Technical Assistance to the Grassroots Movement for Environmental Justice ▪

April 22, 2009  
Chairman Nichols  
Comments on LCFS

burdens and based on the current LCFS, ARB is likely to continue this pattern. The LCFS does not comply with the requirements of the Global Warming Solutions Act of 2006 (AB32) or the California Environmental Quality Act (CEQA). Because of this, ARB is not in a position to approve the LCFS at the upcoming April meeting and should direct staff to complete the proper environmental and environmental justice analysis of this regulation.

The Board approved the AB 32 Scoping Plan on December 12, 2008. Included in that document was a CEQA Functional Equivalent Document. This document postponed the environmental review of a number of factors in the LCFS by stating that they would be addressed either during the regulatory process or during the CEQA process for specific projects under the LCFS.<sup>1</sup> The Environmental Impacts section (Section VII) of the LCFS and its corresponding appendix (Appendix F) inadequately address the potential environmental and environmental justice impacts of this regulation and in many instances postpone analysis until specific projects are proposed. ARB continues to forgo the opportunity to have a more exhaustive analysis of impacts and alternatives and ensure a more thorough cumulative impact analysis.

The Environmental Impacts analysis fails to inform decision-makers and the public about the significant impacts from the LCFS, it fails to provide an adequate discussion of the direct, indirect and cumulative impacts - especially on environmental justice communities, and it fails to provide legally enforceable mitigation measures. In addition, the LCFS fails to ensure that activities undertaken do not disproportionately impact low-income communities as required by AB 32.<sup>2</sup>

### **Air Quality Impacts**

The Air Quality Impacts section of the analysis contained a number of issues both in terms of CEQA and the AB32 mandate regarding disproportionate impacts. First, ARB quantifies the potential air pollution from this rule, but does not do an analysis of the impacts. The information is available for ARB to analyze the local environmental and environmental justice impacts of the LCFS but the analysis has not been done. ARB could, and should, use the current and probable locations for facilities to look at the localized impacts.<sup>3</sup> This localized analysis is important to determining what communities will be affected the most and whether the LCFS has a

---

<sup>1</sup>See CRPE joint "Comments Regarding ARB's Failure to Abide the Law in Its Proposed AB32 Scoping Plan and Functional Equivalent California Environmental Quality Act Document," submitted December 10, 2008.

<sup>2</sup>Health and Safety Code §38562(b)(2)

<sup>3</sup>Table VII-7

disproportionate impact on low-income or communities of color.

Second, ARB failed to perform a proper analysis of the mitigation measures, instead deferring it to the local air districts on a project-by project basis. While ARB lists a number of potential measures that could mitigate some of the air quality impacts identified<sup>4</sup>, it violates the law by not requiring enforcement of these mitigation measures<sup>5</sup>.

### **Air quality impacts from specific fuels**

The LCFS is going forward without full information on cellulosic ethanol facilities - of which ARB assumes 18 new facilities will be built as a result of the demand caused by the LCFS.<sup>6</sup> While ARB admits that cellulosic facilities will have greater energy requirements than other ethanol facilities<sup>7</sup>, it continues to move forward on the LCFS without fully understanding the impacts of these facilities. ARB's promise to provide a guidance document for local governments by the end of 2009 is not sufficient.<sup>8</sup> First, analysis of the impacts of these facilities should not be deferred to specific projects because that leads to the type of piecemeal analysis that ARB must avoid. Second, that information is important for ARB to consider when determining the full impacts of the LCFS and whether it meets AB32 requirements.

ARB also inappropriately assumes there will be no increase in NOx from the use of biodiesel, despite reports showing that biodiesel increases the emissions of NOx.<sup>9</sup> ARB justifies its assumption by stating that it expects to establish a specification for biodiesel to ensure there will be no increase in NOx.<sup>10</sup> Given that the studies have not yet been completed, and therefore ARB cannot be sure a zero NOx increase specification is possible, ARB should include NOx emissions from the increased use of biodiesel into its assessment.

---

<sup>4</sup>VII-12,14

<sup>5</sup>14 CCR § 15126.4(a)(2)

<sup>6</sup>VII-9; Table VII-6

<sup>7</sup>VII-12

<sup>8</sup>VII-12

<sup>9</sup>VII-19

<sup>10</sup>VII-19

**Analysis of potential public health risks**

ARB admits that it underestimated the total public health impact of PM exposure from the LCFS.<sup>11</sup> The assessment excludes “estimates of the effects of PM2.5 on low birth weight and reduced lung function growth in children.” ARB states that these effects “are significant in an assessment of the public health impacts of diesel exhaust emissions,” but excludes them because the “results of the available studies are not entirely consistent.”<sup>12</sup> Some estimate of these effects should be included in the assessment so as not to completely dismiss the importance of these effects on the public and to get a full picture of the potential health impacts of the LCFS.

In addition, the public health impacts assessment completely ignores the effects on sensitive and local populations. The health impact calculations did not include biorefinery emissions because “increased local emissions from biorefineries are expected be offset by decreased emissions within the air basin.”<sup>13</sup> [sic] It also assumes emissions are evenly distributed within the air basin.<sup>14</sup> These assumptions ignore the impacts on local communities near existing and possible biorefinery sites. These communities, many in the Central Valley, will not reap the benefits of statewide air pollution reductions.

ARB suspects that many of the biorefineries built due to the LCFS will be located in the Central Valley.<sup>15</sup> This is an area that has some of the worst air in the nation and already bears a disproportionate burden on air pollution from numerous sources. The communities in these areas already suffer from the pollution impacts of large confined animal facilities; facilities processing sludge, waste, and garbage from all over the state; and hundreds of daily truck trips - just to name a few. Now, these communities must bear the increased cancer risks, premature deaths, hospital admissions, and respiratory ailments that come with living near biorefineries.<sup>16</sup> In addition, the LCFS will not only result in increased facilities, but increased diesel truck and rail trips through

---

<sup>11</sup>F-77

<sup>12</sup>F-77

<sup>13</sup>F-76

<sup>14</sup>F-76

<sup>15</sup>Table VII-7

<sup>16</sup>Areas surrounding the facility fence lines has greatest impact and a potential cancer risk of over 0.4 changes in a million. Statewide impacts of potential biorefineries will be approximately 24 premature deaths, 8 hospital admissions, 340 cases of asthma-related and other respiratory symptoms. VII-23; Appendix F11

these communities.<sup>17</sup>

ARB must examine the cumulative effects on these communities before a decision on the LCFS is made.<sup>18</sup> ARB already deferred true environmental justice analysis in the AB 32 Scoping Plan to subsequent rulemaking. Now, during subsequent rulemaking, ARB is again deferring any environmental justice analysis. This is unacceptable and it is time for ARB to step up and prove that it truly is “committed to making the achievement of environmental justice an integral part of the LCFS.”<sup>19</sup> ARB claims it already conducts “robust environmental and environmental justice assessments” of its regulatory actions.<sup>20</sup> Yet, such assessments are not a part of the LCFS, only promises to conduct these assessments in the future. An environmental justice analysis is an important part of the assessing the LCFS and cumulative impacts on vulnerable communities are a necessary part of that analysis.

### **Water Impacts**

ARB identifies potentially significant impacts to water quality from biofuel spills and unlawful disposal, releases of biofuels into ground and surface water, and wastewater discharge.<sup>21</sup> ARB also identifies water supply issues for the Central Valley and other water scarce areas.<sup>22</sup> After identifying these significant impacts, ARB provides no information on possible mitigation measures. ARB merely states that the State Water Board has authority over water related environmental and regulatory issues,<sup>23</sup> and continues by listing the possible permits that may be required for wastewater discharge.<sup>24</sup> This is not sufficient and ARB must do an analysis of the impacts and mitigation measures before adopting the LCFS. ARB is responsible for its own legal compliance and cannot rely on another state agency to mitigate potential impacts.

---

<sup>17</sup>VII-14; Table F4-3

<sup>18</sup>Health & Safety Code § 38570(b)(1)

<sup>19</sup>VII-35

<sup>20</sup>VII-35

<sup>21</sup>VII-24

<sup>22</sup>VII-26; F83

<sup>23</sup>F83

<sup>24</sup>F83

### **Aesthetics**

ARB relies on future local land use decisionmaking processes and project-specific analysis to assess impact and mitigation measures. This is not sufficient and ARB must do an analysis of the impacts and mitigation measures before adopting the LCFS. ARB is responsible for its own legal compliance and cannot rely on another state agency to mitigate potential impacts.

### **Agricultural Resources**

ARB identifies two significant impacts to agricultural resources: the conversion of prime, unique or important farmland and increased cost of food.<sup>25</sup> ARB lists some broad mitigation measures for conversion of farmland, but does not require that such mitigation be employed. ARB also states that conversion of agricultural land would be subject to CEQA and relies on future local decisionmaking processes.<sup>26</sup>

While identifying it as a significant impact, ARB does not address any mitigation for the increased cost of food due to the LCFS. Nor does ARB address the disproportionate impact that increased food costs would have on low-income communities.

### **Biological Resources**

ARB defers environmental review to subsequent local site specific permitting. However, ARB knows where such fuel production facilities are located or proposed, as well as where they are likely to be located.<sup>27</sup> This is enough to know generally what type of species are likely to be effected by the LCFS. ARB has the opportunity at this stage to evaluate the overall impacts at a state level, which is often not possible in individual project environmental reviews. ARB has already unlawfully deferred this analysis once during the Scoping Plan and should not do so again.

### **Cultural Resources**

ARB identifies a possible adverse impact if siting, grading, facility construction or expansion

---

<sup>25</sup>VII-26

<sup>26</sup>VII-27

<sup>27</sup>Table VII-7

occurs on lands that have not been surveyed for cultural significance.<sup>28</sup> It does not provide any mitigation measures. It defers review to subsequent local site specific permitting. However, ARB knows where such fuel production facilities are located or proposed, as well as where they are likely to be located.<sup>29</sup> This is enough to know generally what, if any, cultural resources are likely to be effected by the LCFS.

### **Hazards and Hazardous Materials**

ARB states that impacts from hazardous waste is not expected to be of major significance.<sup>30</sup> This statement is based on the unsupported statement that “hazardous materials produced from biofuels production *can* generally be recycled, reprocessed, and reused ... [and] facility operators *will want* to minimize generated wastes to minimize operational costs.”<sup>31</sup> (emphasis added) There is no evidence that all or a majority of the facilities projected to be created by the LCFS will recycle hazardous materials - even if they can. ARB’s finding of no significant impact based on an assumption of what facility operators will want to do is not sufficient. ARB should assess the LCFS based on what impacts it would have should operators choose not to recycle and then mitigate those damages. For example, requiring operators to recycle, reuse or reprocess hazardous materials.

Similarly, ARB expects that lithium automotive batteries will not be disposed of in landfills, but makes no requirement that they be recycled, nor perform any analysis of the impact of the LCFS if lithium batteries were to be disposed into landfills.

### **Environmental Justice**

ARB has not done a proper environmental justice evaluation and has not meet its duty to ensure that the LCFS does not disproportionately impact low-income and minority communities. ARB claims that it is developing an approach to consider localized impacts for future rulemaking. It also promises to develop tools, such as a screening method, to aid in the evaluation of the LCFS on disproportionately impacted communities.<sup>32</sup> ARB has committed to develop a guidance

---

<sup>28</sup>VII-28

<sup>29</sup>Table VII-7

<sup>30</sup>VII-29

<sup>31</sup>VII-29

<sup>32</sup>VII-35

April 22, 2009  
Chairman Nichols  
Comments on LCFS

document draft out by the end of December 2009.<sup>33</sup> While all of these commitments to improve the future analysis and develop guidelines are important, they do not absolve ARB from doing an assessment of impacts to the extent feasible now. There are multiple analyses, referenced above, that have enough information to prepare some review of the impacts of the LCFS on disproportionately impacted low-income and minority communities. ARB has failed to do any environmental justice analysis, continually postponing review until sometime in the future. Meanwhile, communities of color and low-income communities are being disproportionately impacted by the decisions made now. An environmental analysis is not just important to protect these vulnerable communities, it is *required* by AB 32 before ARB can approve this regulation.

### Conclusion

The Low Carbon Fuel Standard does not comply with the requirements of AB32 or CEQA. ARB has not performed adequate assessments of the health impacts and has deferred much of the analysis to future project-by-project analysis. ARB has also not performed any environmental justice analysis in violation of law. Because of this, the Board is not in a position to approve the LCFS at the upcoming April meeting and should direct staff to complete the proper environmental and environmental justice analysis of this regulation.

Sincerely,



Sofia L. Sarabia, Staff Attorney  
The Center on Race Poverty & the Environment

Bill Gallegos, Executive Director  
Communities for a Better Environment

Tom Frantz, President  
Association of Irrigated Residents

Juliette Anthony

Raquel Ortega

---

<sup>33</sup>VII-36